IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1116 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NAVINCHANDRA V & SONS

Appearance:

MR HL JANI Ld. APP for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/09/2000

ORAL JUDGEMENT

This acquittal appeal is directed against the impugned judgment and order of acquittal dated26.4.1991 rendered by the learned Chief Judicial Magistrate, Bhuj, district Kutchh in Criminal Case No. 6467/1987.

According to the facts of the prosecution case, complainant Mr MA Saraiya being the Food Inspector visited the shop of the accused persons at around 10.10 O'clock on 4.6.1987 and purchased for examination, 375 grams of groundnut oil and after following the procedure with regard to making of the samples sent one sample for examination by the Public Analyst, Rajkot. Upon the receipt of the report from the Public Analyst and finding that the sample did not conform to the standard prescribed under the provisions of the Prevention of Food Adulteration Act read with the Rules framed thereunder, filed the complaint against the accused persons who are respondents herein, on 24.11.1987. Upon the trial for the offence punishable under sec. 7 read with sec. 16 of the Prevention of Food Adulteration Act, 1954 ('the PFA Act' for short) the learned Magistrate came to the conclusion that the prosecution failed to establish beyond reasonable doubt following of the procedure as required under the provisions of PFA Act and the Rules made thereunder for taking of the samples of the groundnut oil as also the sanction having been accorded without applying mind and acquitted the accused persons from the offence charged against them. The State has preferred this appeal as aforesaid against the said acquittal.

The respondents have been served with the process of this appeal; they have however not appeared before this court. When this appeal came up for hearing before this Court, learned APP Mr Jani read the judgment andthe evidence placed on the record of the case. Upon scrutiny of the evidence and the finding of the learned Magistrate to the effect it could be noticed that there was conflicting evidence with regard to the taking of the samples of the groundnut oil between the complainant and the panch witness and, therefore, taking of sample asper the provision of PFA Act and the Rules made thereunder could not be said to have been established beyond reasonable doubt. The panch witness admitted in his cross-examination that the measure/instrument for taking of sample was taken out from the adjoining tin and the sample was taken with the aid of such measure. He also admitted that the said measure/instrument was not cleaned before it was used for taking of sample. The other utensils and the bottles were also not cleaned. The table spoon which was used for the process of taking of the sample was also not clean. Under such circumstances, the learned Magistrate came to the conclusion that it was not established beyond reasonable doubt that the procedure of taking of sample as prescribed was followed.

It was submitted by the learned APP that the complainant has deposed to the facts with regard to following of the procedure, however, when there is a contrary evidence and when the learned Magistrate having seen the witness deposing before him, has not accepted the evidence of the complainant who was contradicted by the panch witness, at best it could be submitted that two views of the evidence might be possible. In that view of the matter, in an acquittal appeal, when two views are possible, the view which favours the presumtion of innocence will have to be accepted. Hence, this acquittal appeal cannot be entertained.

In view of what is stated above, this acquittal appeal is dismissed.

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